

AMENDED IN SENATE APRIL 7, 2014

SENATE BILL

No. 960

Introduced by Senator ~~Berryhill~~ Morrell

February 6, 2014

An act to amend Section 19801 of the Business and Professions Code, relating to gambling add Section 4310.5 to the Business and Professions Code, relating to pharmacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 960, as amended, ~~Berryhill~~ Morrell. ~~Gambling~~. Pharmacy.

Existing law, the Pharmacy Law, provides for the regulation and licensure of pharmacists by the California State Pharmacy Board. Existing law authorizes the board to refuse to license an applicant guilty of unprofessional conduct or to issue, at its sole discretion, a probationary license to an applicant who has met all other licensure requirements.

This bill would authorize the board to issue a license to an applicant who has committed minor violations that the board deems, in its discretion, do not merit the denial of a license or require probationary status, and to concurrently issue a public letter of reprimand, as specified. The bill would require the letter of reprimand to, among other things, describe in detail the nature and facts of the violation and inform the licensee that he or she may accept the letter of reprimand without challenge or, within 30 days of service of the letter, submit a written request for an office conference to contest the letter of reprimand. The bill would require the executive director of the board, or his or her designee, to hold an office conference with the licensee and his or her legal counsel or authorized representative, if any, within 30 days of receipt of the request, as specified. The bill would authorize the

executive officer, or his or her designee, to affirm, modify, or withdraw the letter of reprimand and would require the executive officer, or his or her designee, to provide the licensee with a written decision within 14 calendar days from the date of the office conference. The bill would require a letter of reprimand issued concurrently with a board license to be purged 3 years from the date of issuance, as specified. The bill would require a letter of reprimand to be disclosed to an inquiring member of the public and posted on the board's Internet Web site.

~~The Gambling Control Act provides for the licensure and regulation of various legalized gambling activities and establishments by the California Gambling Control Commission and the investigation and enforcement of those activities and establishments by the Department of Justice. Existing law makes related findings and declarations.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 4310.5 is added to the Business and*
- 2 *Professions Code, to read:*
- 3 *4310.5. (a) Notwithstanding subdivision (c) of Section 4300,*
- 4 *the board may issue a license to an applicant who has committed*
- 5 *minor violations that the board deems, in its discretion, do not*
- 6 *merit the denial of a license or require probationary status under*
- 7 *Section 4300, and may concurrently issue a public letter of*
- 8 *reprimand.*
- 9 *(b) The letter of reprimand shall be in writing and shall describe*
- 10 *in detail the nature and facts of the violation, including a reference*
- 11 *to the statutes or regulations violated.*
- 12 *(c) The letter of reprimand shall inform the licensee that within*
- 13 *30 days of service of the letter of reprimand the licensee may do*
- 14 *either of the following:*
- 15 *(1) Submit a written request for an office conference to the*
- 16 *executive officer of the board to contest the letter of reprimand.*
- 17 *(A) Within 30 days of receipt of the request, the executive*
- 18 *officer, or his or her designee, shall hold an office conference with*
- 19 *the licensee and the licensee's legal counsel or authorized*
- 20 *representative, if any. Unless authorized by the executive officer,*

1 *or his or her designee, no individual other than the legal counsel*
2 *or authorized representative of the licensee may accompany the*
3 *licensee to the office conference.*

4 *(B) Prior to or at the office conference, the licensee may submit*
5 *to the executive officer, or his or her designee, declarations and*
6 *documents pertinent to the subject matter of the letter of reprimand.*

7 *(C) The office conference is intended to be an informal*
8 *proceeding and shall not be subject to the provisions of the*
9 *Administrative Procedure Act (Chapter 3.5 (commencing with*
10 *Section 11340), Chapter 4 (commencing with Section 11370),*
11 *Chapter 4.5 (commencing with Section 11400), and Chapter 5*
12 *(commencing with Section 11500) of Part 1 of Division 3 of Title*
13 *2 of the Government Code).*

14 *(D) The executive officer, or his or her designee, may affirm,*
15 *modify, or withdraw the letter of reprimand. Within 14 calendar*
16 *days from the date of the office conference, the executive officer,*
17 *or his or her designee, shall personally serve or send by certified*
18 *mail to the licensee's address of record with the board a written*
19 *decision. This decision shall be deemed the final administrative*
20 *decision concerning the letter of reprimand.*

21 *(E) Judicial review of the decision may be had by filing a*
22 *petition for a writ of mandate in accordance with the provisions*
23 *of Section 1094.5 of the Code of Civil Procedure within 30 days*
24 *of the date the decision was personally served or sent by certified*
25 *mail. The judicial review shall extend to the question of whether*
26 *or not there was a prejudicial abuse of discretion in the issuance*
27 *of the letter of reprimand.*

28 *(2) The licensee may accept the letter of reprimand without*
29 *challenge. The board shall inform the licensee that the letter of*
30 *reprimand shall be purged after three years if no letter of*
31 *admonishment, citation, notice of correction, or disciplinary action*
32 *is initiated by the board within those three years.*

33 *(d) The letter of reprimand shall be served upon the licensee*
34 *personally or by certified mail at the applicant's address of record*
35 *with the board. If the applicant is served by certified mail, service*
36 *shall be effective upon deposit in the United States mail.*

37 *(e) A public letter of reprimand issued concurrently with a board*
38 *license shall be purged three years from the date of issuance if no*
39 *letter of admonishment, citation, notice of correction, or*

1 *disciplinary action is initiated by the board during the three-year*
2 *period.*

3 *(f) A public letter of reprimand issued pursuant to this section*
4 *shall be disclosed to an inquiring member of the public and shall*
5 *be posted on the board's Internet Web site.*

6 *(g) Nothing in this section shall be construed to affect the*
7 *board's authority to issue an unrestricted license.*

8 ~~SECTION 1. Section 19801 of the Business and Professions~~
9 ~~Code is amended to read:~~

10 ~~19801. The Legislature hereby finds and declares all of the~~
11 ~~following:~~

12 ~~(a) State law prohibits commercially operated lotteries, banked~~
13 ~~or percentage games, and gambling machines, and strictly regulates~~
14 ~~parimutuel wagering on horse racing. To the extent that state law~~
15 ~~categorically prohibits certain forms of gambling and prohibits~~
16 ~~gambling devices, nothing herein shall be construed, in any manner,~~
17 ~~to reflect a legislative intent to relax those prohibitions.~~

18 ~~(b) The State of California has permitted the operation of~~
19 ~~gambling establishments for more than 100 years. Gambling~~
20 ~~establishments were first regulated by the State of California~~
21 ~~pursuant to legislation that was enacted in 1984. Gambling~~
22 ~~establishments currently employ more than 20,000 people in the~~
23 ~~State of California, and contribute more than one hundred million~~
24 ~~dollars (\$100,000,000) in taxes and fees to California's~~
25 ~~government. Gambling establishments are lawful enterprises in~~
26 ~~the State of California and are entitled to full protection of the laws~~
27 ~~of this state.~~

28 ~~(c) Gambling can become addictive and is not an activity to be~~
29 ~~promoted or legitimized as entertainment for children and families.~~

30 ~~(d) Unregulated gambling enterprises are inimical to the public~~
31 ~~health, safety, welfare, and good order. Accordingly, no person in~~
32 ~~this state has a right to operate a gambling enterprise except as~~
33 ~~may be expressly permitted by the laws of this state and by the~~
34 ~~ordinances of local governmental bodies.~~

35 ~~(e) It is the policy of this state that gambling activities that are~~
36 ~~not expressly prohibited or regulated by state law may be prohibited~~
37 ~~or regulated by local government. Moreover, it is the policy of this~~
38 ~~state that no new gambling establishment may be opened in a city,~~
39 ~~county, or city and county in which a gambling establishment was~~
40 ~~not operating on and before January 1, 1984, except upon the~~

1 affirmative vote of the electors of that city, county, or city and
2 county.

3 (f) It is not the purpose of this chapter to expand opportunities
4 for gambling, or to create any right to operate a gambling enterprise
5 in this state or to have a financial interest in any gambling
6 enterprise. Rather, it is the purpose of this chapter to regulate
7 businesses that offer otherwise lawful forms of gambling games.

8 (g) Public trust that permissible gambling will not endanger
9 public health, safety, or welfare requires that comprehensive
10 measures be enacted to ensure that gambling is free from criminal
11 and corruptive elements, that it is conducted honestly and
12 competitively, and that it is conducted in suitable locations.

13 (h) Public trust and confidence can only be maintained by strict
14 and comprehensive regulation of all persons, locations, practices,
15 associations, and activities related to the operation of lawful
16 gambling establishments and the manufacture and distribution of
17 permissible gambling equipment.

18 (i) All gambling operations, all persons having a significant
19 involvement in gambling operations, all establishments where
20 gambling is conducted, and all manufacturers, sellers, and
21 distributors of gambling equipment must be licensed and regulated
22 to protect the public health, safety, and general welfare of the
23 residents of this state as an exercise of the police powers of the
24 state.

25 (j) To ensure that gambling is conducted honestly, competitively,
26 and free from criminal and corruptive elements, all licensed
27 gambling establishments in this state must remain open to the
28 general public, and the access of the general public to licensed
29 gambling activities must not be restricted in any manner, except
30 as provided by the Legislature. However, subject to state and
31 federal prohibitions against discrimination, nothing in this chapter
32 shall be construed to preclude exclusion of unsuitable persons from
33 licensed gambling establishments in the exercise of reasonable
34 business judgment.

35 (k) In order to effectuate state policy as declared in this section,
36 it is necessary that gambling establishments, activities, and
37 equipment be licensed, that persons participating in those activities
38 be licensed or registered, that certain transactions, events, and
39 processes involving gambling establishments and owners of
40 gambling establishments be subject to prior approval or permission,

1 that unsuitable persons not be permitted to associate with gambling
2 activities or gambling establishments, and that gambling activities
3 take place only in suitable locations. Any license or permit issued,
4 or other approval granted pursuant to this chapter, is declared to
5 be a revocable privilege, and no holder acquires any vested right
6 in that license, permit, or other approval or under this chapter.

7 ~~(l) The location of lawful gambling premises, the hours of~~
8 ~~operation of those premises, the number of tables permitted in~~
9 ~~those premises, and wagering limits in permissible games~~
10 ~~conducted in those premises are proper subjects for regulation by~~
11 ~~local governmental bodies. However, consideration of those same~~
12 ~~subjects by a state regulatory agency, as specified in this chapter,~~
13 ~~is warranted when local governmental regulation respecting those~~
14 ~~subjects is inadequate or the regulation fails to safeguard the~~
15 ~~legitimate interests of residents in other governmental jurisdictions.~~

16 ~~(m) The exclusion or ejection of certain persons from gambling~~
17 ~~establishments is necessary to effectuate the policies of this chapter~~
18 ~~and to maintain effectively the strict regulation of licensed~~
19 ~~gambling.~~

20 ~~(n) Records and reports of cash and credit transactions involving~~
21 ~~gambling establishments may have a high degree of usefulness in~~
22 ~~criminal and regulatory investigations and, therefore, licensed~~
23 ~~gambling operators may be required to keep records and make~~
24 ~~reports concerning significant cash and credit transactions.~~